

CIGIE Pilot Course –
Introduction to Suspension and Debarment
Washington, D.C


Auditing an Agency's Suspension and Debarment Program

Tony Weiss – Program Director

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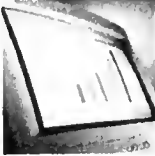

Outline

1. Learning Objective for this Module
2. Background on DOT-OIG Audit
3. Audit Planning
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Learning Objective

How can auditors, inspectors, and evaluators improve the efficiency and effectiveness of their agency's Suspension and Debarment Program?

Background: OIG Audit of DOT's S&D Program

- Self-initiated performance audit
- S&D Program on the OIG's Top Management Challenges to DOT
- DOT's significant contract and grant obligations
 - Averaged \$58 billion annually over last 4 years
- American Recovery and Reinvestment Act of 2009
 - Added \$48 billion requiring DOT's oversight



Audit Planning: Survey Activities

Background research included:

- Identified and reviewed Government-wide and departmental suspension and debarment (S&D) and guidance
- Met with DOT's Debarment Officials to become familiar with their internal controls and processes. Collected and reviewed policies and procedures
- Collected and reviewed DOT procedures, practices, databases
- Analyzed DOT's 2005 & 2006 S&D Annual Reports to assist in developing audit scope and objectives

Audit Planning: Developing our Scope

What was our scope?

- DOT is a decentralized agency with 12 Operating Administrations (OAs)
- Focused work at Office of Senior Procurement Executive (OSPE) and three DOT OAs that accounted for most of DOT's S&D activity during CYs 2005-2006:
 - 1 Federal Highway Administration (FHWA)
 - 2 Federal Transit Administration (FTA)
 - 3 Federal Aviation Administration (FAA)

How did we determine it?

- ✓ Analyzed DOT's 2005 and 2006 Annual Report data on S&D to determine a department-wide universe of 129 cases
- ✓ From this universe we determined FHWA, FAA, and FTA represented 94 percent of DOT's S&D activity—or 121 cases

Audit Planning: Objectives

Performance Audit Objectives

We assessed:

1. The timeliness of DOT's suspension and debarment (S&D) decisions and reporting
2. The effectiveness of DOT's S&D policies and oversight to exclude prohibited parties from receiving DOT contracts and grants

Audit Planning: Audit Criteria

Developed from sources including:

Laws and Regulations

- PL 103-355 Sec 2455, Uniform Suspension, Debarment or Exclusion from Procurement and Nonprocurement Activities
- Non procurement, 49 Code of Federal Regulations Part 29, Governmentwide Debarment and Suspension, 2 CFR, Part 180, OMB Guidelines to Agencies on Governmentwide Debarment and Suspension
- Procurement, All Operating Administrators (except FAA), Federal Acquisition Regulation (FAR) 48 C.F.R Subpart 9.4, Debarment, Suspension, and Ineligibility

Executive Orders

- 12549, Debarment and Suspension of Participants in Federal Programs, 1986
- 12689, Debarment and Suspension, 1989

Departmental Policies and Regulations

- Transportation Acquisition Regulation (DOT, less FAA)
- Acquisition Management System (AMS) (FAA's acquisition policy)

Audit Implementation

Our key work included:

- Reviewed applicable laws, regulations, departmental policies & procedures
 - Code of Federal Regulations related to suspension and debarment (2 C.F.R Governmentwide Debarment and Suspension)
 - Federal Acquisition Regulation, Subpart 9.4 - Debarment Suspension, and Ineligibility
 - DOT Order 4200.5D, Governmentwide Debarment, Suspension & Ineligibility, 2005
 - OA supplements to DOT Order 4200.5D FHWA Order 2000.2A, FHWA Non Procurement Suspension and Debarment Process (Federal Aid Program), 2000
 - OSPE's S&D Annual Reports, 2005-2008
- Assessed the adequacy and clarity of FAA, FHWA, and FTA's internal controls, procedures, practices, and supporting databases
- Interviewed suspension and debarment officials in these OAs to obtain a clear understanding of their processes and their implementation and their views on these policies and procedures

Audit Implementation

- For our sample, compared entries in the EPLS and Federal Procurement Database System-NG to identify if suspended or debarred businesses received a new contract during a period of suspension or debarment and whether such decisions were reported timely
 - We judgmentally selected sample from 188 parties suspended or debarred DOT-wide, 2005 to 2007
- Analyzed documentation and testimonial evidence at the selected OAs to determine how each coordinated and shared S&O information, and collected data to monitor the S&O process.
- Worked with our OIG's Investigations to understand their role in implementing DOT's Order
- Interviewed officials in other agencies to learn about their S&D policies
 - U.S. Environmental Protection Agency
 - Defense Logistics Agency

Audit Report

Our January 7, 2010 report – *DOT's Suspension and Debarment Program Does Not Safeguard Against Awards to Improper Parties*

- Presented findings on timeliness and internal control weaknesses
- Recommended DOT's Senior Procurement Executive and the FAA improve their S&D policies and internal controls



Summary of Findings

DOT Operating Administrations' S&D decisions and reporting were significantly delayed

- Slow decisions - On average, the OAs we reviewed took over 300 days to reach a suspension decision, over 400 days for a debarment decision
 - Some OAs did not rely on indictment or conviction standards to establish the evidentiary basis for suspension or debarment actions
- Untimely reporting - S&D decisions not entered in Excluded Party Listing System (EPLS) within 5 days, as required

Weaknesses exist in DOT's S&D policies, procedures, and internal controls.

- Policy did not clearly establish that Operating Administrations must suspend or propose debarment within 45 days
- Office of the Secretary of Transportation provided insufficient management oversight over the S&D Program
- DOT lacks controls to identify weaknesses in its S&D data in the EPLS

Recommendations to DOT's Senior Procurement Executive

1. Revise DOT Order 4200.5D, Governmentwide Debarment, Suspension and Ineligibility to:

- o Assign an office oversight responsibility for monitoring DOT's implementation of the S&D Program
- o Require that DAs establish implementation procedures for their S&D Program roles and responsibilities
- o Clarify that DAs are to issue suspension or debarment notices—or make a written justification why a suspension or debarment is not warranted under the circumstances—within 45 days of notification of a referral
- o Require that OAs follow S&D evidence standards provided under Federal regulations—an indictment is a sufficient basis by itself for suspension, and a civil judgment or conviction is a sufficient basis for debarment—and that factors not contemplated by regulations should not be considered when determining a party's present responsibility

Recommendations to DOT's Senior Procurement Executive (cont.)

2. Modify DOT's SharePoint database and establish corresponding internal controls and validation processes to:

- o Ensure the entry of accurate, complete, and timely S&D data, such as periodic reconciliations between case files and SharePoint
- o Upgrade SharePoint to allow queries and summary reports for the system to be used as a management oversight tool and meet the annual report requirements

3. Improve OSPE's internal controls for the entry of accurate, complete, and timely S&D information to EPLS, such as periodic reconciliations between SharePoint and EPLS.

4. Require DAs to immediately provide OSPE a full inventory of DOT's open S&D cases.

Recommendations to FAA

1. Revise FAA's Procurement Guidance, Debarment & Suspension to

- o Assign an office oversight responsibility for monitoring implementation of FAA's S&D Program
- o Require the establishment of implementation procedures for their S&D Program roles and responsibilities
- o Clarify that FAA is to issue suspension or debarment notices—or make a written justification why a suspension or debarment is not warranted under the circumstances—within 45 days of notification of a referral
- o Require adherence to S&D evidence standards provided under Federal regulations—namely to (1) suspend parties upon learning of their indictment and (2) debar parties upon learning of their conviction or receipt of a civil judgment

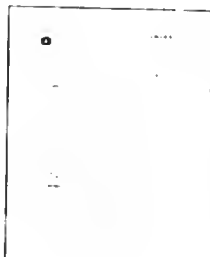
2. Improve its internal controls for the entry of accurate, complete, and timely S&D information to EPLS, such as periodic reconciliations between SharePoint and EPLS.

Results of Our Audit Work

Agency concurred and initiated actions* including

- DOT revised its S&D Order 4200 SE, Governmentwide Debarment, Suspension and Ineligibility in March 2010.
- DOT implemented actions to improve data systems used to manage S&D caseload
- Cycle times for DOT's S&D actions over the April 2010 – April 2011 period have improved

*Agency actions & results have not been validated by OIG



Takeaways for a Successful Audit

Synergy through use of OIG's cross-functional team

- **Audit** – Consult with subject matter experts in your office as well as OIGs from other agencies for best practices and assistance



- **Investigations** – Coordinate with your Office of Investigations to obtain S&D referral data & documentation, access to information sources and research tools not normally available to auditors, and other technical assistance

- **Legal Counsel** – Involve legal counsel early during audit work for interpretations of policies, regulations, and overall legal guidance

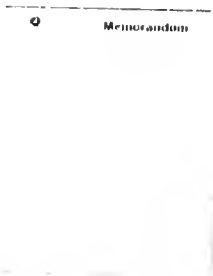


Takeaways for a Successful Audit

- **Maintain continuous, open communications with auditee.**

For example, we:

- Conveyed issues early in audit and via our ARRA Advisory, May 18, 2009
- Consulted early and often with DOT managers to help develop realistic recommendations
- No surprises at the issuance of draft products



Recent DOT-OIG Products

- Congressional Testimony - *Weaknesses in DOT's Suspension and Debarment Limit Its Protection of Government Funds* before the House Oversight and Government Reform Committee hearing, "Rewarding Bad Actors: Why Do Poor Performing Contractors Continue to Get Government Business?" March 18, 2010
- Final Report - *DOT's Suspension and Debarment Program Does Not Safeguard Against Awards to Improper Parties*, January 7, 2010
- ARRA Advisory - *DOT's Suspension & Debarment Program*, May 18, 2009

Q&A - Discussion



For Additional Information

Anthony J. Wysocki

Program Director - Acquisition & Procurement Audits
Office of Inspector General | U.S. Department of Transportation
1200 New Jersey Avenue, SE | Washington, D.C. 20590
202-493-0223 | anthony.wysocki@oig.dot.gov

For more information visit our website:

<http://www.oig.dot.gov>
